

# **McCORMACK DECLARATION**

## **EXHIBIT K**

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# ORIGINAL

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
VASILIS AFTOUSMIS and CONSTANTIA AFTOUSMIS, :

Plaintiffs, :

Index No.

-against- 102479/07 :

WONDER WORKS CONSTRUCTION CORP., and :  
FORTHRIGHT CONSTRUCTION, INC., :

Defendants.

-----X  
FORTHRIGHT CONSTRUCTION, INC., :

Third-Party Plaintiff, :

-against- :

MMG DESIGN, INC., ATY INC., N & C IRONWORKS, :  
INC., O.M.I. CONSTRUCTION CO., INC., and :  
MONACO CONSTRUCTION CORP., :

Third-Party Defendants. :

-----X  
WONDER WORKS CONSTRUCTION CORP., :

Second Third-Party Plaintiff, :

-against- :

MMG DESIGN, INC., ATY INC., N & C IRONWORKS, :  
INC., O.M.I. CONSTRUCTION CO., INC., and :  
MONACO CONSTRUCTION CORP., :

Second Third-Party Defendants.

-----X  
DATE: May 13, 2008

DEPONENT: Mark Kanevsky

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BARRISTER REPORTING SERVICE, INC.

120 Broadway

New York, N.Y. 10271

212-732-8066

EXAMINATION BEFORE TRIAL of the  
Defendant/Third-Party Plaintiff, FORTHRIGHT  
CONSTRUCTION, INC., by MARK KANEVSKY, taken by  
the Plaintiffs, pursuant to Order, held at the  
offices of Voute, Lohrfink, Magro & Collins,  
LLP, 100 Park Avenue, New York, New York, on May  
13, 2008, at 1:00 p.m., before a Notary Public  
of the State of New York.

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BARRISTER REPORTING SERVICE, INC.

120 Broadway

New York, N.Y. 10271

212-732-8066

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2 A P P E A R A N C E S :

3

LAW OFFICES OF STEVEN NEWMAN  
Attorney for Plaintiffs  
65 Broadway  
Suite 825  
New York, New York 10006

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MC CABE, COLLINS, MC GEOUGH & FOWLER,  
ESQS.

7

8

Attorneys for Defendant/Second  
Third-Party Plaintiff  
WONDER WORKS CONSTRUCTION CORP.  
346 Westbury Avenue  
Carle Place, New York 11514

9

10

BY: MICHAEL SMAR, ESQ.

11

12

VOUTE, LOHRFINK, MAGRO & COLLINS, LLP  
Attorneys for Defendant/  
Third-Party Plaintiff  
FORTHRIGHT CONSTRUCTION, INC.  
170 Hamilton Avenue  
White Plains, New York 10601-1789

13

14

15

BY: RALPH F. SCHOENE, ESQ.

16

17

CAMACHO MAURO MULHOLLAND, LLP.  
Attorneys for Third-Party  
Defendant/Second Third-Party  
Defendant  
MMG DESIGN, INC.  
350 Fifth Avenue  
Suite 5101  
New York, New York 10118

18

19

20

21

BY: JOSEPH O. TUFFY, ESQ.

22

23

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25

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2 A P P E A R A N C E S (Continued):

3 SCUNZIANO & ASSOCIATES, LLC  
4 Attorneys for Third-Party  
5 Defendant/Second Third-Party  
6 Defendant

7 N & C IRONWORKS, INC.  
8 8403 13th Avenue  
9 Brooklyn, New York 11228

10 BY: NICHOLAS SCUNZIANO, ESQ.

11

12 RIVKIN RADLER, LLP.  
13 Attorneys for Third-Party  
14 Defendant/Second Third-Party  
15 Defendant  
16 MONACO CONSTRUCTION CORP.  
17 EAB Plaza  
18 Uniondale, New York 11556-0111

19 BY: FRANK J. GILIBERTI, ESQ.

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2 M A R K K A N E V S K Y ,

3 having been first duly sworn before a

4 Notary Public of the State of New

5 York, was examined and testified as

6 follows:

7

8 EXAMINATION BY

9 MR. NEWMAN:

10 Q. Please state your name for the record.

11 A. Mark Kanevsky.

12 Q. What is your address?

13 A. 2681-A East 14th Street, Brooklyn, New  
14 York 11221.

15 Q. Good afternoon, sir. My name is Steve

16 Newman. I represent the Plaintiffs in this

17 case. I'll be asking you a series of

18 questions, and these other lawyers might

19 follow-up if I'm not doing a complete job,

20 but I will try to do that. I will give you a

21 couple of instructions, standard lawyer talk,

22 before we start. All of your responses have

23 to be oral. You can't gesture. You have to

24 say something.

25 Do you understand what I just said to

1 Kanevsky

2 A. I don't pay attention to this number.

3 Approximately four or five years. .

4 Q. When you say you are a principal of  
5 Forthright Construction, Inc., what does that  
6 mean?

7 A. I'm a vice-president.

8 Q. Have you been a vice-president of  
9 Forthright Construction, Inc. for four or  
10 five years?

11 A. Yes.

12 Q. Do you hold any other positions in  
13 Forthright Construction, Inc.?

14 A. No.

15 Q. What do you do as a vice-president of  
16 Forthright Construction, Inc.?

17 A. Everything that I'm suppose to do as a  
18 vice-president.

19 Q. What is that?

20 A. Can you clarify your question, please?

21 Q. What do you do? What is your job as  
22 the vice-president of Forthright  
23 Construction, Inc.?

24 A. I have too many responsibilities.

25 Q. Okay.

1 Kanevsky

2 What are they?

3 A. They're related to Quentin Terrace  
4 project.

5 Q. What job functions are related to  
6 Quentin Terrace project? What do you do?

7 A. As vice-president I oversee the  
8 project from the very beginning stage. Then  
9 in the construction stage I do interfere with  
10 people who are involved in the design, as the  
11 architects and engineers, and also the  
12 subcontractors who do the actual work.

13 Q. When you say that you oversaw or  
14 oversee the project on Quentin Road, what  
15 does that involve? What have you done?

16 A. Physically oversee the project. Be on  
17 the job site, look exactly at what's going on  
18 at the job site, have a report from my  
19 supervisors. Control everything that's going  
20 on at the job site. You can put it in one  
21 word, everything.

22 Q. When did you start to oversee the  
23 project on Quentin Road?

24 A. In the very beginning.

25 Q. Which was when?



1 Kanevsky

2 A. 2004.

3 Q. Now, in 2004 was Forthright  
4 Construction, Inc. the general contractor, a  
5 subcontractor? What was their role for the  
6 construction project at Quentin Road?

7 A. I would say general contractor.

8 Q. What was Wonder Works in relation to  
9 Forthright?

10 A. Wonder Works is a general contractor  
11 on the same job.

12 Q. So, your testimony is that there were  
13 two general contractors working the job on  
14 Quentin Road; is that correct?

15 A. You can say so.

16 MR. NEWMAN: Let's have this  
17 marked as Plaintiff's Exhibit 1.

18 (Whereupon a photograph was  
19 marked Plaintiff's Exhibit 1, for  
20 identification as of this date.)

21 Q. Sir, I'm showing you what has been  
22 marked as Plaintiff's 1, and this is a  
23 photograph of a sign. I'm asking you have  
24 you ever seen that sign before?

25 A. Yes.

1 Kanevsky

2 Q. What did that entail? What are the  
3 specifics that you did? What are the  
4 specifics that you did starting from 2004?

5 A. I already answered this question. I  
6 oversee the whole project.

7 Q. What did that entail? What did you  
8 do?

9 A. I oversee the whole project. I  
10 physically built the building.

11 Q. You physically built the building?

12 A. That's what it means.

13 Q. Take me through that.

14 When you say you physically built the  
15 building, were you responsible for doing the  
16 excavation?

17 A. Yes, I do.

18 Q. Were you responsible for doing the  
19 underpinning?

20 A. Yes, I do.

21 Q. Were you responsible for building --

22 MR. SCHOENE: I'll make an

23 objection to the word responsible.

24 I'm not sure what you mean by that

25 word. I will not direct him not to

1 Kanevsky

2 answer, but I object to form as to  
3 what responsible means.

4 MR. NEWMAN: Okay.

5 Q. Let me ask you this.

6 What did you do in terms of excavating  
7 the ground adjacent to 97 Quentin Road?

8 A. I already told you. I already  
9 explained. I physically oversee the whole  
10 project on the job site. If somebody did the  
11 actual work, I was there to check and make  
12 sure the job was done accurately.

13 Q. When it came to excavation of the  
14 ground adjacent to 97 Quentin Road, who did  
15 you oversee?

16 I'll ask it again.

17 Was there a company or an individual  
18 that excavated the ground next to 97 Quentin  
19 Road?

20 A. Everybody who used to be on the  
21 project was under my supervision.

22 MR. SCHOENE: He wants to know  
23 who did the excavation.

24 Q. Who did the excavation?

25 A. ATY.

1 Kanevsky

2 A. Yes, I did.

3 Q. Do you recall what did you contract  
4 with ATY Inc. to do at Quentin Road?

5 A. Original contract was started from  
6 excavation and foundation. We also extend  
7 this contract to underpinning and shoring.

8 Q. When did ATY Inc. begin to work on the  
9 project? When I'm talking about the project,  
10 I'm talking about the work being performed  
11 adjacent to 97 Quentin Road.

12 A. I believe it was the end of 2004. I'm  
13 not sure.

14 Q. Before ATY Inc. began to perform work  
15 somewhere around the end of 2004, was there  
16 any other work that was performed at the site  
17 adjacent to 97 Quentin Road?

18 A. I don't think so.

19 MR. SCHOENE: Do you mean by  
20 other companies before that?

21 MR. NEWMAN: No. Just any work.

22 MR. SCHOENE: By ATY you said.

23 MR. NEWMAN: No. I will clarify  
24 now.

25 MR. SCHOENE: I think the answer

1 Kanevsky

2 will be different depending on the  
3 question.

4 MR. NEWMAN: I think Counsel is  
5 right, that I'm not being clear  
6 enough.

7 Q. I'm simply asking, was the first work  
8 done adjacent to 97 Quentin Road excavation  
9 work?

10 A. No.

11 Q. What was the very first work that was  
12 done adjacent to 97 Quentin Road?

13 A. Demolition.

14 Q. Fair enough.

15 Who performed the demolition work?

16 A. MMG.

17 Q. MMG Design?

18 A. MMG Design.

19 Q. Who contracted with them?

20 A. I did.

21 Q. Did you literally enter into a written  
22 contract with them, them being MMG Design,  
23 Inc.?

24 A. Yes.

25 Q. When was that?

1 Kanevsky

2 constructed?

3 A. Sure.

4 Q. What company did the underpinning?

5 A. ATY.

6 Q. How long did it take for ATY to do the  
7 underpinning?

8 A. I don't remember. It took a few  
9 months.

10 MR. SCHOENE: May I just  
11 interject?

12 Was there more than one company  
13 that did underpinning?

14 THE WITNESS: Yes. We started  
15 with Monaco. They worked with us for  
16 two or three days, and that's it.

17 They didn't work anymore over there.

18 MR. NEWMAN: Let's mark the  
19 diagram as Plaintiff's Exhibit 2.

20 (Whereupon a diagram drawn by  
21 Mr. Kanevsky was marked Plaintiff's  
22 Exhibit 2, for identification as of  
23 this date.)

24 Q. Are you familiar with a company named  
25 Monaco Construction Corp.?

51

1 Kanevsky

2 excavation work?

3 A. Say it again, please.

4 Q. The reason that Monaco Construction  
5 Corp. never performed any of the excavation  
6 work, was it because they got into some sort  
7 of dispute with MMG Design?

8 MR. GILIBERTI: Objection.

9 MR. SCHOENE: Are you aware of  
10 any dispute that occurred between MMG  
11 Design and Monaco? Yes or no?

12 THE WITNESS: I heard that  
13 Monaco didn't work for MMG Design  
14 anymore. So, they left.

15 Q. Do you know what the problem was?  
16 What the dispute was?

17 A. I don't know.

18 Q. We'll move on.

19 After Monaco Construction Corp. was no  
20 longer employed by MMG Design, is that when  
21 you contracted with ATY Inc. to do excavation  
22 work?

23 A. Yes.

24 Q. Were you there on-site everyday that  
25 ATY did the excavation and the underpinning

1 Kanevsky

2 and the foundation work?

3 A. Yes.

4 Q. Did I get that right, that the first  
5 thing that ATY Inc. did was excavation of the  
6 site?

7 A. No.

8 Q. What's the first thing that ATY Inc.  
9 did for the project?

10 A. It's a standard procedure.  
11 Underpinning.

12 Q. Before they did the underpinning, did  
13 they have to excavate the ground adjacent to  
14 97 Quentin Road?

15 A. No. They can't.

16 Q. So, the very first thing that ATY Inc.  
17 did on the project was underpinning?

18 A. Yes.

19 Q. Did you observe the underpinning?

20 A. Sure.

21 Q. Tell me what you observed. What did  
22 ATY Inc. do to underpin?

23 A. It's a difficult question.

24 Q. I will break it down for you.

25 Where did the ATY Inc. underpinning



1 Kanevsky

2 building. In order to be able to do the  
3 excavation, the nearest property -- this  
4 process involve partial -- okay -- partial  
5 support in a certain type of existing  
6 foundation. This process moves along the  
7 property as far as the previous part is done.  
8 Each part usually takes two, three, four  
9 days. This process involves partial of  
10 digging under the foundation, filling those  
11 digging holes with reinforced concrete and  
12 dry packing of the gap between existing  
13 foundation and new underpinning. That is  
14 what underpinning means.

15 Q. Did you observe all of what you just  
16 described occur in the underpinning that was  
17 performed adjacent to 97 Quentin Road?

18 A. Yes.

19 Q. Did you observe it literally everyday  
20 that the underpinning was performed?

21 A. Yes.

22 Q. Did you take any pictures?

23 A. Yes.

24 Q. Where are those pictures?

25 A. Oh, we have a lot of them.

1 Kanevsky

2 well?

3 MR. SMAR: Objection.

4 Q. Was there anyone with you when you  
5 inspected 97 Quentin Road for the first time?

6 A. I don't remember, but one of the  
7 representatives of Wonder Works was there.

8 So, we inspected on a daily basis.

9 Q. I'm not asking you about on a daily  
10 basis. I'm asking you about the first time  
11 you inspected --

12 A. I don't remember, sir.

13 Q. Let me get the question out.

14 The first time you inspected 97  
15 Quentin Road did you inspect the interior of  
16 the building 97 Quentin Road?

17 A. Only whatever was visible.

18 Q. Let me be clear.

19 Sir, were you dealing with anyone in  
20 particular on a regular basis who was  
21 employed by Wonder Works when overseeing the  
22 project?

23 A. Yes, I do.

24 Q. Who were you dealing with at Wonder  
25 Works?

1 Kanevsky

2 site.

3 Q. In doing the work was there any title  
4 that was given to you? If somebody said I  
5 want to see the construction manager, would  
6 that be you? Did you have a title?

7 A. I have to do everything.

8 Q. I'm just asking. If the answer is no,  
9 the answer is no. No problem.

10 A. Okay.

11 Q. Is it fair to say you supervised the  
12 underpinning?

13 A. Yes.

14 Q. Did you supervise the excavation?

15 A. Yes.

16 Q. Did you supervise the construction of  
17 the foundation?

18 A. Yes.

19 Q. You testified earlier in describing  
20 underpinning that one of the components of  
21 the underpinning is dry packing.

22 A. Yes.

23 Q. Describe to me what dry packing is.

24 A. Dry packing is a material which is not  
25 as a regular concrete shrinks. So, after the

1 Kanevsky

2 construction? Everything was perfect?

3 A. The building is perfect. It's still  
4 standing. It did not come down.

5 Q. From when the job first began -- we'll  
6 go back to the underpinning in a moment --  
7 how long was it to take from the demolition  
8 to the completion of the building? How long  
9 was that?

10 A. Four years.

11 Q. Four years?

12 A. About.

13 Q. In your educational background and  
14 your experience working as a construction  
15 manager in the United States, is that a  
16 normal amount of time to build a building the  
17 size of the building adjacent to 97 Quentin  
18 Road?

19 A. There is no standard on it.

20 Q. Are there documents that show that the  
21 plan was to take four years to construct the  
22 building?

23 A. The plans don't show any dates.

24 Q. Were there any delays encountered at  
25 anytime in constructing this building?

1 Kanevsky

2 the answer as not responsive.

3 Q. Let me ask it again.

4 You testified that there were  
5 violations that were issued, and I'm asking  
6 you do you know if the Department of  
7 Buildings or the Environmental Protection  
8 Board ever found at a hearing that those  
9 violations were legitimate?

10 A. I don't recall any particular  
11 violations. So, I would say no.

12 Q. Now, did you ever get the chance to  
13 inspect prior to demolition adjacent to 97  
14 Quentin Road the interior of 97 Quentin Road?

15 A. No.

16 Q. Did you ever inspect the interior of  
17 97 Quentin Road?

18 A. Yes.

19 Q. When?

20 A. Probably 2006 or late 2005. Something  
21 like that.

22 Q. Did you inspect the interior of 97  
23 Quentin Road alone or with somebody else?

24 A. With somebody else.

25 Q. Who else?

1 Kanevsky

2 A. I believe the person was a super at  
3 that building.

4 Q. How did you get entry to 97 Quentin  
5 Road in the time that you're describing?

6 A. He invited me.

7 Q. Did you get in contact with him, or  
8 how did you get to know who the super was?

9 A. He simply catch me on the job site and  
10 asked me to take a look at something.

11 Q. So, the super approached you?

12 A. Yes.

13 Q. The super of 97 Quentin Road  
14 approached you and asked you to look at  
15 something. What did he say to you when he  
16 approached you at the job site?

17 A. He brought me to the basement. So, I  
18 had a chance to look at the basement, but the  
19 super at that time used to work as a finish  
20 guy on doors. He used to paint the doors,  
21 and he had showed me his job and he offered  
22 me his help. He asked me to do the job on  
23 the project.

24 Q. He approached you on the job site, the  
25 super for 97 Quentin Road, because he was

1 Kanevsky

2 looking for work?

3 A. Yes.

4 Q. Did you offer him work?

5 A. I told him when the time came, why  
6 not.

7 Q. Besides for that, besides for the  
8 super asking you for work, did he ask you to  
9 come and look inside 97 Quentin Road or did  
10 you initiate that inspection?

11 A. Ask me again.

12 Q. The first time you met the super at 97  
13 Quentin Road you said he met you on the job  
14 site and asked you basically for work; is  
15 that correct?

16 A. Yes.

17 Q. Did something else happen in that  
18 initial interaction between you and the super  
19 that led you to inspect the interior of 97  
20 Quentin Road?

21 A. Yes. I found that through the  
22 foundation wall you can see outside through  
23 the cracks, and I asked him what kind of  
24 crack is that? How long is that crack there?

25 Q. I appreciate what you're saying, and I

1 Kanevsky

2 A. At that time, no.

3 Q. When was the next time you were in the  
4 interior of 97 Quentin Road?

5 A. I was in there a few times. I can't  
6 recall exactly.

7 Q. About how many times were you in the  
8 interior of the building?

9 A. Two, three, four.

10 Q. How did you get in on the other times?  
11 Was the super always letting you in or  
12 something else?

13 A. I believe another time again with the  
14 super, and another time the owner of the  
15 building.

16 Q. What was the purpose of going into 97  
17 Quentin Road after your initial visit? What  
18 was the purpose? Why did you visit the  
19 interior of 97 Quentin Road after the first  
20 time?

21 A. Okay. He probably asked me about  
22 complaints of the work.

23 Q. The owner complained?

24 A. Yes.

25 Q. How did you hear that the owner was



1 Kanevsky

2 complaining?

3 A. He stopped by. He explained to me all  
4 his complaints.

5 Q. What's the owner's name?

6 A. I don't know.

7 Q. When was the first time the owner  
8 complained to you?

9 A. He wasn't actually complaining. He  
10 had concerns. I would say he had concerns.

11 Q. What were the concerns of the owner?

12 A. Same, cracks.

13 Q. Cracks in the basement?

14 A. Yes.

15 Q. What exactly in expressing his  
16 concerns to you did the owner say to you?

17 A. He saw the cracks.

18 Q. He said I saw cracks in the basement?

19 A. Yes.

20 Q. Did he say anything else to you?

21 A. Anything else?

22 Q. Yes.

23 A. Yes. He said I see the cracks, and I  
24 have a concern about those cracks.

25 Q. What did you say?

1 Kanevsky

2 A. I explained to him my opinion how  
3 those cracks could appear, and I also offered  
4 to him when we finish our work to fix  
5 anything in the building. Same thing that we  
6 offer all other neighbors who were around the  
7 property, and we kept our word.

8 Q. That's excellent.

9 MR. SCHOENE: There was no  
10 reason for that.

11 MR. NEWMAN: It was a comment.  
12 I'm not allowed to make a comment?

13 MR. SCHOENE: No.

14 MR. NEWMAN: Strike the comment.  
15 It's not allowed at the deposition.

16 Q. You said you had an explanation for  
17 the cracks. What was the explanation that  
18 you gave?

19 A. From my point of view that building  
20 used to have very poor maintenance.

21 Q. Poor maintenance. Okay.

22 A. Not poor maintenance. Very poor  
23 maintenance, first of all, and the second,  
24 very poor quality of building. For example,  
25 in the same cracks that we're talking about

1 Kanevsky

2 A. Yes. This is the piles that I used to  
3 talk about, and this is the crack along the  
4 piles.

5 Q. When was the first time you saw that  
6 crack on the cement slab as depicted in Photo  
7 Number 2?

8 A. I don't remember. It was much earlier  
9 than the first time I went in the basement  
10 with the owner. I'm sure I saw it before. I  
11 didn't inspect the basement, but I'm sure I  
12 saw this.

13 Q. Before you were in the basement with  
14 Bill Aftousmis?

15 A. With Bill Aftousmis. I used to be in  
16 the basement before Bill Aftousmis a few  
17 times, one or two times. I definitely saw  
18 this crack before.

19 Q. Did you ever put any crack monitors  
20 down on any part of Bill Aftousmis' building?

21 A. Yes, from my side.

22 Q. Why did you do that?

23 A. Because when they point me to the  
24 cracks, I had to monitor the cracks. In this  
25 case I was able to assess those cracks were

1 Kanevsky

2 movable, still movable. So, it belongs to  
3 any activities, or are they stable. That ,  
4 means they not belong to any activity as  
5 excavation and underpinning. So, I monitored  
6 those cracks, and I do have a picture of  
7 those monitors.

8 Q. What did the crack monitors show?

9 A. They didn't move they showed.

10 Q. Where did you put the crack monitors?

11 A. On a few places on this wall.

12 Q. How many?

13 A. There was a few of them.

14 Q. Did you do any monitoring of Bill  
15 Aftousmis' building during the excavation?

16 A. Yes, I do.

17 Q. What kind of monitoring did you do  
18 during the excavation?

19 A. Okay. During when I hammered the  
20 piles, and the piles went on this line --

21 Q. Yes.

22 A. -- I hired a company that monitored  
23 the vibration of the ground.

24 Q. What was the name of the company?

25 A. I don't remember. It's in my records.